IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
September 25, 2007 Session

STATE OF TENNESSEE v. PAUL SCHLUETER

Direct Appeal from the Criminal Court for Hamilton County
No. 257013 Barry A. Steelman, Judge

No. E2006-02365-CCA-R3-CD - Filed May 23, 2008

The appellant, Paul Schlueter, pled guilty in the Hamilton County Criminal Court to one count of driving under the influence (DUI) and received a sentence of eleven months and twenty-nine days. As a condition of his plea, the appellant reserved a certified question of law: "whether the officer was justified in stopping and seizing this [appellant] pursuant to his community caretaking function or any other reasonable and articulable suspicion by activating his lights on or about 9-2-05." Upon our review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Bryan H. Hoss, Chattanooga, Tennessee, for the appellant, Paul Schlueter.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; William H. Cox, III, District Attorney General; and Jay Woods, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

After the appellant was charged with DUI, he filed a motion to suppress any evidence obtained as a result of the traffic stop which culminated in his arrest. At the suppression hearing, Hamilton County Sheriff's Deputy Arvel Edwards testified that on September 2, 2005, he was dispatched to the Lakesite Marina at 9546 Hixson Pike after being "told it was a party that was in a vehicle asleep with the car running." When Officer Edwards arrived at the location, the marina store was closed and there were a number of vehicles in the parking lot. Officer Edwards saw the appellant's green vehicle in the parking lot, "barely moving." Scott Williams, the individual who had placed the call to police, was waiting in the parking lot. Officer Edwards approached Williams and spoke with him for four or five minutes. While they were talking, the appellant's vehicle

stopped moving. Williams told Officer Edwards that the year before, someone had died in the parking lot; therefore, Williams was concerned about the appellant.

When a backup officer arrived, Officer Edwards got into his police cruiser and pulled behind the appellant's vehicle, activating his blue lights. Officer Edwards exited the police cruiser and walked up to the appellant's vehicle. He saw the appellant "slumped over" the steering wheel. He tapped on the driver's window, and the vehicle "started lunging forward." Officer Edwards tapped on the window again, and the vehicle stopped moving. Officer Edwards asked the appellant what he was doing and had the appellant step out of the vehicle. The appellant admitted that he consumed six beers while at Amigo's restaurant. The appellant also failed several field sobriety tests.

Scott Dewayne Williams testified that he lived at 9546 Hixson Pike at the Lakesite Marina. Williams said that Hixson Pike was a very busy road that led to downtown Chattanooga. At 11:40 p.m. on September 2, 2005, he saw a vehicle pull into the parking lot of the marina. Three other vehicles were parked there. He stated that was not unusual; however, he noticed that the taillights of the vehicle remained lit, as if the driver were keeping his foot on the brake. Further, the vehicle was parked at a "weird angle," not in a parking space, and not far off the main road. Williams thought that the location was where someone in distress on Hixson Pike would pull over. Williams said, "[H]e was just pulled off like he was in distress." After twenty minutes, the brake light remained lit, and Williams thought it should be checked out. Williams stated that he shined a light in the car, and "[a]ll I could see was the top of the person's head, and it was just slumped over like this over the wheel." Thereafter, he called police dispatch and reported either that the appellant "may drunk or asleep or dead" or that the appellant was "drunk or dead."

When Officer Edwards arrived, Williams spoke with him for a couple of minutes. While they were speaking, the vehicle moved approximately six inches, as if the appellant had let his foot off the brake. Williams stated that he was unsure if the appellant was alive or dead until the vehicle started moving again. Williams saw Officer Edwards tap on the appellant's window to get him out of the vehicle. The appellant said, "Well, where am I at?"

Based upon the foregoing, the trial court found that Officer Edwards was acting pursuant to his community caretaking function when he activated his blue lights and approached the appellant's vehicle. Therefore, the court overruled the appellant's motion to suppress. The appellant entered a guilty plea to DUI, properly reserving a certified question of law. On appeal, the appellant questions "whether the officer was justified in stopping and seizing this [appellant] pursuant to his community caretaking function or any other reasonable and articulable suspicion by activating his lights on or about 9-2-05."

II. Analysis

In reviewing a trial court's determinations regarding a suppression hearing, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18,

23 (Tenn. 1996). Thus, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." Id. Nevertheless, appellate courts will review the trial court's application of law to the facts purely de novo. See State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001). Furthermore, the State, as the prevailing party, is "entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." Odom, 928 S.W.2d at 23.

Both the Fourth Amendment to the United States Constitution and Article 1, section 7 of the Tennessee Constitution prohibit unreasonable searches and seizures by law enforcement officers. These constitutional provisions "'safeguard the privacy and security of individuals against arbitrary invasions of government officials.'" State v. Munn, 56 S.W.3d 486, 494 (Tenn. 2001) (quoting State v. Bridges, 963 S.W.2d 487, 490 (Tenn. 1997)); see also State v. Downey, 945 S.W.2d 102, 106 (Tenn. 1997). However, not all police-citizen encounters involve a seizure as envisioned by our constitutional protections. In fact, there are three types of police-citizen interactions: "(1) a full scale arrest which must be supported by probable cause, (2) a brief investigatory detention which must be supported by reasonable suspicion of criminal activity, and (3) a brief 'consensual' police-citizen encounter which requires no objective justification." State v. Williams, 185 S.W.3d 311, 318 (Tenn. 2006) (citations omitted). Brief consensual police-citizen encounters include "community caretaking or public safety functions." Id.

The Supreme Court, in discussing the "community caretaking function," has explained that

> [b]ecause of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office. Some such contacts will occur because the officer may believe the operator has violated a criminal statute, but many more will not be of that nature. Local police officers . . . frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

Cady v. Dombrowski, 413 U.S. 433, 441, 93 S. Ct. 2523, 2528 (1973). In Williams, our supreme court cited with approval the Cady rationale. 185 S.W.3d at 318. Indeed, other courts have remarked that in certain situations, "police officers are not only permitted, but expected, to exercise what the Supreme Court has termed 'community caretaking functions.'" United States v. King, 990 F.2d 1552, 1560 (10th Cir. 1993). Moreover, situations arise in which "[i]f we were to insist upon suspicion of activity amounting to a criminal or civil infraction to meet the Terry . . . standard, we would be overlooking the police officer's legitimate role as a public servant to assist those in distress and to maintain and foster public safety." State v. Pinkham, 565 A.2d 318, 319 (Me. 1989).

In the instant case, the appellant argues that the activation of the blue lights on Officer Edwards' police cruiser amounted to a seizure of his person which required the officer to have at least reasonable suspicion of criminal behavior. At first blush, our case law appears to support the appellant's position. Notably, our supreme court has stated that "[u]pon turning on the blue lights of a vehicle, a police officer has clearly initiated a stop and has seized the subject of the stop within the meaning of the Fourth Amendment of the Federal Constitution and Article I, section 7 of the Tennessee Constitution." State v. Binette, 33 S.W.3d 215, 218 (Tenn. 2000). However, the court tempered this declaration by cautioning that "[n]ot all use of the emergency blue lights on a patrol car will constitute a show of authority resulting in the seizure of a person." Williams, 185 S.W.3d at 318. In point of fact, "[a]lthough activation of blue lights ordinarily triggers a 'stop' or 'seizure,' it is not unusual for a police officer to activate the blue lights on his or her patrol car for safety purposes when on the side of a road or at an accident site." State v. James Dewey Jensen, Jr., No. E2002-00712-CCA-R3-CD, 2002 WL 31528549, at *3 (Tenn. Crim. App. at Knoxville, Nov. 15, 2002) (citation omitted). In short, "when officers act in their community caretaking function, they may want to activate their emergency equipment for their own safety and the safety of other motorists." Williams, 185 S.W.3d at 318.

In the instant case, the trial court stated that when Officer Edwards was dispatched,

> he had an obligation to check it out. . . . Because the person could have been sick, the person could have been having a stroke, anything could have happened, so I think he had an obligation to stop him, because the fact he was barely moving was even more suspicious that something might be wrong with him.

The trial court believed Officer Edwards had an obligation to investigate whether a citizen was in distress. The court noted that police occasionally stop someone who is believed to be intoxicated or in diabetic shock. The court said, "And that could have been. When he goes up to the car and the car slightly moves, it could be somebody in diabetic shock that's reacting." The court found that the officer "had an obligation to check it out, and until he got him out of the car, he had no idea whether or not he was in distress or whether he was under the influence."

We agree with the trial court. The evidence in the record reveals that Officer Edwards was dispatched to investigate a vehicle because of a suspicion that the motorist was asleep, drunk, or dead. When the officer arrived, the vehicle was moving slowly, then stopped. The vehicle again began to move in a slow fashion, as if the driver were in distress. The appellant argues that the activation of the blue lights was not a safety measure but was done instead "as a show of authority." However, we disagree. We conclude that Officer Edwards was acting within his community caretaking function when he activated the blue lights of his police cruiser and approached the appellant's vehicle. We further conclude that under the facts of this case, the activation of Officer Edwards' blue lights was not a seizure requiring reasonable suspicion. Instead, Officer Edwards was acting with concern for his own safety and the safety of all persons involved. Therefore, Officer Edwards had a legitimate interest in announcing himself as law enforcement before approaching the

appellant's vehicle, and he approached the parked car from behind because he was concerned about his safety. Accordingly, we conclude that the stop of the appellant was not illegal, and the trial court did not err by denying the appellant's motion to suppress.

III. Conclusion

Based upon the foregoing, we affirm the judgment of the trial court.

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NORMA McGEE OGLE, JUDGE